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17 **UNITED STATES DISTRICT COURT**  
18 **EASTERN DISTRICT OF CALIFORNIA**

19 TAYLOR SMART AND MICHAEL HACKER,  
Individually and on Behalf of All  
20 Those Similarly Situated,  
Plaintiffs,  
21 v.  
22 NATIONAL COLLEGIATE ASSOCIATION, an  
unincorporated association,  
Defendant.

23 JOSEPH COLON, SHANNON RAY, KHALA  
TAYLOR, PETER ROBINSON, KATHERINE  
SEBBAME, and PATRICK MEHLER,  
individually and on behalf of all  
25 those similarly situated,  
Plaintiffs,  
v.  
27 NATIONAL COLLEGIATE ATHLETIC  
ASSOCIATION, an unincorporated  
association,  
Defendant.

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Unincorporated Association.

No. 2:22-cv-02125 WBS KJN

Chief United States Magistrate  
Judge Kendall J. Newman (KJN)  
*Assigned for non-dispositive  
matters*

**STIPULATED PROTECTIVE ORDER**

No. 1:23-cv-00425 WBS KJN

Chief United States Magistrate  
Judge Kendall J. Newman (KJN)  
*Assigned for non-dispositive  
matters*

1  
2 **I. INTRODUCTION**

3       The parties, by their undersigned counsel, pursuant to Fed.  
4 R. Civ. P. 26(c)(1), hereby stipulate to the following  
5 provisions.

6 **II. SCOPE OF PROTECTED INFORMATION**

7       In the course of discovery in this action, the parties may  
8 be required to produce information that constitutes, in whole or  
9 in part, protected information such as trade secrets, non-public  
10 research and development, commercial or financial information, or  
11 other information that may cause harm to the Producing Party or a  
12 non-party. The parties anticipate production of the following  
13 categories of protected information:

14       A. "Confidential" information:

- 15           1. Information (regardless of how it is generated,  
16                  stored, or maintained) or tangible things that  
17                  qualify for protection under Fed. R. Civ. P. 26(c);  
18           2. Information protected from disclosure by statute;  
19           3. Information that reveals trade secrets;  
20           4. Research, technical, commercial, or financial  
21                  information that the party has maintained as  
22                  confidential;  
23           5. Medical information and protected health information  
24                  concerning any individual;

- 1       6. Personal identifying information of any person who is
- 2              not a party to this action, including absent class
- 3              members;
- 4       7. Any information whose disclosure would cause severe
- 5              competitive harm to the Designating Party if
- 6              disclosed;
- 7       8. Personnel or employment records of a person who is
- 8              not a party to this action,
- 9       9. Education records concerning any individual; and
- 10      10. Other information the disclosure of which would
- 11              breach a legal or contractual obligation.

13      B. "Confidential" Information under this order does not  
14              include any information that

- 15       1. is publicly available at the time of disclosure and  
16              became publicly available through lawful means and  
17              without the violation of any court orders;
- 18       2. becomes publicly available after disclosure through  
19              no fault of the Receiving Party (defined below); or
- 20       3. the Receiving Party lawfully obtains at a later date  
21              from a third party without restriction as to  
22              disclosure.

23      C. "Attorneys' Eyes Only" information:

- 24       1. Documents, testimony, or information that contains,  
25              or is reasonably believed to contain, or is claimed  
26              by another party to contain education records defined

1 by the Family Educational Rights and Privacy Act, 20  
2 U.S.C. § 1232g, and any regulations passed pursuant  
3 to that Act by the Department of Education or any  
4 other federal agency ("FERPA Records") of any student  
5 who has not consented to the disclosure of such  
6 records; and

7 2. Other non-public, extremely sensitive confidential  
8 information, disclosure of which the Designating  
9 Party believes in good faith would create a  
10 substantial risk of serious financial, reputational,  
11 or other harm, or a serious violation of a privacy  
12 interest that could not be avoided by less  
13 restrictive means.

14 **III. DESIGNATION OF PROTECTED INFORMATION**

15 A. Scope: This Order governs the production and handling  
16 of any protected information in this action. Any party or non-  
17 party who produces protected information in this action may  
18 designate it as "Confidential" or "Attorneys' Eyes Only"  
19 consistent with the terms of this Order. "Designating Party"  
20 means the party or non-party who so designates the protected  
21 information; "Receiving Party" means the party or non-party to  
22 whom such information was produced or disclosed. Whenever  
23 possible, the Designating Party must designate only those  
24 portions of a document, deposition, transcript, or other material  
25 that contain the protected information and refrain from

1 designating entire documents. Regardless of any designations  
2 made hereunder, the Designating Party is not otherwise restricted  
3 from use or disclosure of its protected information outside of  
4 this action. In addition, any party may move to modify or seek  
5 other relief from any of the terms of this Order if it has first  
6 tried in writing and in good faith to resolve its needs or  
7 disputes with the other party(ies) pursuant to the terms of this  
8 Order and E.D. Cal. L.R. 251, and Fed. R. Civ. P. 26 and 37.

10       B. Application to Non-Parties: Before a non-party is given  
11 copies of designated information as permitted hereunder, it must  
12 first sign the acknowledgment to be bound to these terms that is  
13 attached hereto as Exhibit A; if it fails to do so, the parties  
14 to this action must resolve any such dispute before making  
15 disclosure of designated information as permitted hereunder to  
16 the non-party. If a non-party wishes to make designations  
17 hereunder, it must first sign the acknowledgment to be bound to  
18 these terms that is attached hereto as Exhibit A.

20       C. Timing and Provisional Protection: Designations may be  
21 made at any time. To avoid potential waiver of protection  
22 hereunder, the Designating Party should designate information at  
23 the time of production or disclosure, including on the record  
24 during the taking of any testimony. Deposition testimony will be  
25 deemed provisionally protected for a period of 15 days after the  
26 transcript is released to the parties by the court reporter,  
27 although the parties may agree at any time to different timelines

1 of provisional protection of information as Confidential or  
2 Attorneys' Eyes Only as part of one or more specific depositions.  
3 To retain any designations beyond the provisional period, a  
4 Designating Party must designate specific pages and lines of  
5 deposition testimony before the provisional period has expired.  
6 Such designations must be made in writing so that all counsel and  
7 court reporters may append the designation to all copies of the  
8 transcripts.

10       D. Manner of Designation: Information may be designated  
11 hereunder in any reasonable manner or method that notifies the  
12 Receiving Party of the designation level and identifies with  
13 specificity the information to which the designation applies. If  
14 made verbally, the Designating Party must promptly confirm in  
15 writing the designation. Whenever possible, the Designating  
16 Party should stamp, affix, or embed a legend of "CONFIDENTIAL" or  
17 "ATTORNEYS' EYES ONLY" on each designated page of the document or  
18 electronic image.

20 **IV. CHALLENGES TO DESIGNATED INFORMATION**

21       In the event that a Receiving Party disagrees at any time  
22 with any designation(s) made by the Designating Party, the  
23 Receiving Party must first try to resolve such challenge in good  
24 faith on an informal basis with the Designating Party pursuant to  
25 E.D. Cal. L.R. 251 and Fed. R. Civ. P. 37. The Receiving Party  
26 must provide written notice of the challenge and the grounds  
27 therefor to the Designating Party, who must respond in writing to

1 the challenge within 15 days. At all times, the Designating  
2 Party carries the burden of establishing the propriety of the  
3 designation and protection level. Unless and until the challenge  
4 is resolved by the parties or ruled upon by the Court, the  
5 designated information will remain protected under this Order and  
6 shall remain Confidential or Attorneys' Eyes Only as designated.  
7  
8 The failure of any Receiving Party to challenge a designation  
9 does not constitute a concession that the designation is proper  
10 or an admission that the designated information is otherwise  
11 competent, relevant, or material.

12 **V. LIMITED ACCESS/USE OF PROTECTED INFORMATION**

13 A. Restricted Use: Information that is produced or  
14 exchanged in the course of this action and designated under this  
15 Order may be used solely for the preparation, trial, and any  
16 appeal of this action, as well as related settlement  
17 negotiations, and for no other purpose, without the written  
18 consent of the Designating Party. No designated information may  
19 be disclosed to any person except in accordance with the terms of  
20 this Order. All persons in possession of designated information  
21 agree to exercise reasonable care with regard to the custody,  
22 use, or storage of such information to ensure that its  
23 confidentiality is maintained. This obligation includes, but is  
24 not limited to, the Receiving Party providing to the Designating  
25 Party prompt notice of the receipt of any subpoena that seeks  
26 production or disclosure of any designated information and

1 consulting with the Designating Party before responding to the  
2 subpoena. Any use or disclosure of Confidential or Attorneys'  
3 Eyes Only information in violation of the terms of this Order may  
4 subject the disclosing person or party to sanctions.

5       B. Access to "Confidential" Information: The parties and  
6 all persons subject to this Order agree that information  
7 designated as "CONFIDENTIAL" may only be accessed or reviewed by  
8 the following:

- 10           1. The Court, its personnel, and court reporters;
- 11           2. Outside counsel for any party in this action and  
12              their employees who assist outside counsel in this  
13              action and are informed of the duties hereunder;
- 14           3. The parties, including their agents and employees  
15              who are assisting or have reason to know of this  
16              action, so long as each such agent or employee has  
17              signed the acknowledgment to be bound to these terms  
18              that is attached hereto as Exhibit A;
- 19           4. Experts or consultants employed by the parties or  
20              their counsel for purposes of this action, as well as  
21              mock jurors, so long as each such expert, consultant  
22              and mock juror has signed the acknowledgment to be  
23              bound to these terms that is attached hereto as  
24              Exhibit A;
- 25           5. Any mediators that the parties may engage in this  
26              action or that the Court appoints, including

1 supporting personnel, so long as such mediator or  
2 supporting staff signs the acknowledgment to be bound  
3 to these terms that is attached hereto as Exhibit A;

4 6. Vendors who provide litigation support services  
5 (e.g., photocopying, videotaping, translating,  
6 preparing exhibits or demonstrations, and processing,  
7 organizing, storing, reviewing, categorizing, or  
8 retrieving data in any form or medium) whose  
9 representative signs the acknowledgement to be bound  
10 to these terms that is attached hereto as Exhibit A;

11 7. Entities who provide insurance coverage to parties in  
12 this case, so long as any personnel employed by the  
13 insurance entity who is to be granted access to the  
14 information sign the acknowledgment to be bound to  
15 these terms that is attached hereto as Exhibit A;

16 8. Witnesses in the action to whom disclosure is  
17 reasonably necessary, so long as such witnesses  
18 signed the acknowledgement to be bound to these terms  
19 that is attached as Exhibit A unless the Receiving  
20 Party has a good faith basis to believe that the  
21 witness was an author or recipient of the information  
22 designed as "Confidential"; and

23 9. Other witnesses or persons with the Designating  
24 Party's consent or by court order.

1       C. Access to "Attorneys' Eyes Only" Designations: Because  
2 designation of information as "Attorneys' Eyes Only" is more  
3 restrictive on disclosure and may interfere with the discovery  
4 process, such designations should be used only to the extent  
5 necessary. The parties and all persons subject to this Order  
6 agree that information designated as "ATTORNEYS' EYES ONLY" may  
7 only be accessed or reviewed by the following:  
8

- 9           1. The Court, its personnel, and court reporters;
- 10          2. Outside counsel for any party in this action and  
11              their employees who assist outside counsel in this  
12              action and are informed of the duties hereunder;
- 13          3. In-house counsel for each party and their employees  
14              who assist in-house counsel, who sign the  
15              acknowledgement to be bound to these terms that is  
16              attached hereto as Exhibit A;
- 17          4. Any mediators that the parties may engage in this  
18              action or that the Court appoints, including  
19              supporting personnel, so long as such mediator or  
20              supporting staff signs the acknowledgment to be bound  
21              to these terms that is attached hereto as Exhibit A;
- 22          5. Experts or consultants employed by the parties or  
23              their counsel for purposes of this action, as well as  
24              mock jurors, so long as each such expert, consultant  
25              or mock juror has signed the acknowledgement to be  
26  
27  
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1                   bound to these terms that is attached hereto as  
2                   Exhibit A;

3         6. Vendors who provide litigation support services  
4                   (e.g., photocopying, videotaping, translating,  
5                   preparing exhibits or demonstrations, and processing,  
6                   organizing, storing, reviewing, categorizing, or  
7                   retrieving data in any form or medium) whose  
8                   representative signs the acknowledgement to be bound  
9                   to these terms that is attached hereto as Exhibit A;  
10               7. Witnesses at deposition for which the Receiving Party  
11                   has a good faith basis to believe that the witness  
12                   was an author or recipient of the information  
13                   designated as "ATTORNEYS' EYES ONLY"; and  
14               8. Other witnesses or persons to whom the Designating  
15                   Party agrees in advance of disclosure or by court  
16                   order and who sign the acknowledgement to be bound to  
17                   these terms that is attached hereto as Exhibit A.

20               D. Review of Witness Acknowledgments: At any time and for  
21                   any purpose, including to monitor compliance with the terms  
22                   hereof, any Designating Party may demand to review all copies of  
23                   Exhibit A in any Receiving Party's possession. The Receiving  
24                   Party must, within 3 business days of the demand, provide all  
25                   such copies to the Designating Party making the demand.  
26               Notwithstanding the foregoing, if the Receiving Party has  
27                   retained an expert whose identity has not yet been disclosed to

1 the Designating Party, the Receiving Party may generically  
2 identify how many acknowledgments that it has in its possession  
3 attributable to non-disclosed experts, whose acknowledgements  
4 must later be provided contemporaneously with any reports issued  
5 by one or more of said experts. If a Receiving Party is not  
6 required to disclose the identity of any consulting experts, it  
7 may not be compelled to produce any acknowledgments from those  
8 experts to the Designating Party. However, if the Designating  
9 Party provides to the Court evidence of breach of this Order via  
10 unauthorized leak of designated information, the Court may  
11 require an *in camera* production of all acknowledgments held by a  
12 Receiving Party in order to determine breach and consider  
13 enforcement of this Order.

14

15       E. Non-Waiver Effect of Designations: Neither the taking  
16 of, nor the failure to take, any action to enforce the provisions  
17 of this Order, nor the failure to object to any designation, will  
18 constitute a waiver of any party's claim or defense in this  
19 action or any other action or proceeding, including but not  
20 limited to a claim or defense that any designated information is  
21 or is not confidential, is or is not entitled to particular  
22 protection, or embodies or does not embody information  
23 protectable by law.

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26       F. In-Court Use of Designated Information: If information  
27 designated pursuant to this Order will or may be offered in  
28 evidence at a hearing or trial, then the offering party must give

1 advance notice to the party or non-party that designated prior to  
2 offering the information so that any use or disclosure may be  
3 addressed in accordance with the Court's case-management or other  
4 pre-trial order, or by a motion *in limine*.

5 Nothing in this Order shall be construed as a waiver by a party  
6 of any objections that may be raised as to the admissibility at  
7 trial of any evidentiary materials.

8 **VI. CLAW-BACK REQUESTS**

9       A. Failure to Make Designation: If, at any time, a party  
10 or non-party discovers that it produced or disclosed protected  
11 information without the appropriate designation, the Producing  
12 Party shall promptly notify the Receiving Party within ten (10)  
13 business days of the discovery of the disclosure in writing and  
14 identify with particularity the information to be designated and  
15 the level of designation (the claw-back notification). The  
16 Receiving Party shall promptly destroy the document and may then  
17 request substitute production of the newly-designated  
18 information. Within 30 days of receiving the claw-back  
19 notification, the Receiving Party must (1) certify to the  
20 Designating Party it has destroyed all copies that it received,  
21 made, and/or distributed; and (2) if it was practicably unable to  
22 destroy any information because disclosures occurred while the  
23 Receiving Party was under no duty of confidentiality under the  
24 terms of this Order regarding that information, the Receiving  
25 Party must reasonably provide as much information as practicable  
26  
27  
28

1 to aid the Designating Party in protecting the information,  
2 consistently with the Receiving Party's attorney-client, work-  
3 product, and/or trial-preparation privileges.

4           B. Inadvertent Production of Privileged Information: If,  
5 at any time, a party discovers that it produced information that  
6 it reasonably believes is subject to protection under the  
7 attorney/client, work-product, trial-preparation privileges, or  
8 any other legally-recognized privilege, then it must promptly  
9 notify each Receiving Party of the claim for protection, the  
10 basis for it, amend its privilege log accordingly, and comply  
11 with Fed. R. Civ. P. 26(b)(5). Whenever possible, the Producing  
12 Party must produce substitute information that redacts the  
13 information subject to the claimed protection. The Receiving  
14 Party must thereupon comply with Fed. R. Civ. P. 26(b)(5) as to  
15 the information subject to the claimed protection. The parties  
16 must also comply with E.D. Cal. L.R. 251 before seeking Court  
17 intervention to resolve any related dispute.

18 **VII. DURATION/CONTINUED RESTRICTIONS**

19           A. Handling of Designated Information Upon Conclusion of  
20 Action: Upon conclusion of this action, including all appeals,  
21 the Designating Party(ies) is/are responsible for ensuring that  
22 any party or person to whom the party shared or disclosed  
23 designated information in this action returns or destroys all of  
24 its copies that can be reasonably located, regardless of the  
25 medium in which it was stored. Within 60 days after the later of  
26  
27  
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1 dismissal of this action or expiration of all deadlines for  
2 appeal, the Receiving Party(ies) must certify to each Designating  
3 Party that all designated information hereunder has been  
4 destroyed by all parties and witnesses for whom that party is  
5 responsible. No witness or party may retain designated  
6 information that it received from any other party or non-party  
7 under this Order; only counsel of record are the authorized  
8 agents who may retain one copy for their respective legal files,  
9 and who must also describe to the Designating Party the extra  
10 steps taken to seal its legal file containing paper and/or  
11 electronic copies of the designated information so that it is not  
12 accessed, used, or disclosed inconsistently with the obligations  
13 under this Order. This provision does not apply to the Court or  
14 Court staff.

15       B. Continued Restrictions Under this Order: The  
16 restrictions on disclosure and use of confidential information  
17 survive the conclusion of this action.

18       **VIII. REQUESTS TO SEAL**

19       A. Filing Documents Under Seal: The parties shall comply  
20 with E.D. Cal. L.R. 141 when filing material designated as  
21 protected information pursuant to this order. Over-redaction of  
22 documents sought to be maintained under seal may result in the  
23 denial of a motion to seal.

24       B. Challenging "Confidential" or "Attorneys' Eyes  
25 Only" Designations: Prior to the filing of any motion seeking to

1 challenge the designation of information as "Confidential" or  
2 "Attorneys' Eyes Only" as set forth in Section IV above, the  
3 parties will request a telephonic conference with the Magistrate  
4 Judge to discuss the issue, following which the contesting party  
5 may move for an order removing or altering the "Confidential" or  
6 "Attorneys' Eyes Only" designation with regard to such  
7 document(s).

8

9 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD:

10 DATED: September 29, 2023

11

12 MUNGER, TOLLES & OLSON LLP

13

14

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Attorneys for Plaintiffs Joseph Colon, Shannon Ray, Khala Taylor, Peter Robinson, Katherine Sebbane, and Patrick Mehler

## ORDER

The court has reviewed the parties' stipulated protective order. (See 1:23-cv-00425-WBS-KJN at ECF No. 54; 2:22-cv-02125-WBS-KJN at ECF No. 46.) The stipulation comports with the relevant authorities and the court's applicable local rule. See L.R. 141.1. The court APPROVES the protective order, subject to the following clarification. Once an action is closed, "the court will not retain jurisdiction over enforcement of the terms of any protective order filed in that action." L.R. 141.1(f); see also, e.g., MD Helicopters, Inc. v. Aerometals, Inc., 2017 WL 495778 (E.D. Cal., Feb. 03, 2017) (noting that courts in the district generally do not retain jurisdiction for disputes concerning protective orders after closure of the case). Thus, despite the parties' agreement that jurisdiction extend beyond the end of this action, the court will not retain jurisdiction over this protective order once the case is closed.

Dated: October 16, 2023

Kendall J. Newman  
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

smar.2125

**EXHIBIT A**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

TAYLOR SMART AND MICHAEL HACKER,  
Individually and on Behalf of All  
Those Similarly Situated,  
Plaintiffs,

No. 2:22-cv-02125 WBS KJN

NATIONAL COLLEGIATE ASSOCIATION, and  
unincorporated association,  
Defendant.

No. 1:23-cv-00425 WBS KJN

JOSEPH COLON, SHANNON RAY, KHALA  
TAYLOR, PETER ROBINSON, KATHERINE  
SEBBAME, and PATRICK MEHLER,  
individually and on behalf of all  
those similarly situated,  
Plaintiffs,

NATIONAL COLLEGIATE ATHLETIC  
ASSOCIATION, an unincorporated  
association,  
Defendant.

**AGREEMENT TO BE BOUND BY PROTECTIVE ORDER**

The undersigned acknowledges having been provided with and having read the "Stipulated Protective Order" in this matter ("Protective Order"). The undersigned further agrees he/she (i) is bound under the Protective Order, (ii) will comply with all of its provisions, and (iii) is subject to the jurisdiction of the Court for all purposes arising under the Protective Order, including enforcement of its terms.

Dated:

By:

Print Name: